

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DUPLICATE

In re Application of )

GAF BROADCASTING COMPANY, INC. )

) File No. BRH-901201WL

For Renewal of License of Station )  
WNCN(FM), New York, NY )

• RECEIVED

TO THE CHIEF, MASS MEDIA BUREAU

SEP 14 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**JOINT REQUEST FOR APPROVAL  
OF SETTLEMENT AGREEMENT**

The New York State Conference of Branches of the NAACP ("NAACP") and GAF Broadcasting Company, Inc. ("GAF"), licensee of Station WNCN(FM), New York, NY ("the Station"), by their attorneys, respectfully request the Commission to approve the Agreement dated August 12, 1992 between the NAACP and GAF, appended hereto as Exhibit 1.

The agreement attempts to resolve allegations raised in a Petition to Deny, filed May 1, 1991 by the NAACP, to the effect that

In support of the agreement, NAACP submits, as Exhibit 2 hereto, documentation of the legal fees and expenses attributable to the attorneys for NAACP who worked on this matter. Such fees and expenses well exceed the sum which GAF has agreed to reimburse to the NAACP should this Agreement be approved.

The Agreement expresses the totality of the understandings among the parties, and no other funds are to flow to the NAACP or NBMC from any party under the Agreement.

Appended as Exhibits 3-4 hereto are the declarations of no consideration of principals of each party to the Agreement. These declarations comply with the Commission's requirements applicable to citizen-broadcaster agreements.<sup>1/</sup>

---

<sup>1/</sup> Prevention of Abuses of the Renewal Process, 4 FCC Rcd 4780, 4785-86 (1989). Therein, the Commission stated:

Where a petition to deny is settled in exchange for money, we will allow such payments provided they do not exceed the petitioner's legitimate and prudent expenses in prosecuting its petition. We agree with Capital Cities/ABC, UCC et al., ACT et al. and other commenters that we must not discourage the use of petitions to deny in order to further our public interest goals. Petitions to deny play a critical role in our current regulatory scheme. Members of the public, through the use of petitions to deny, serve as private attorneys general informing us of deficiencies in the performance of licensees and helping us ensure that licensees serve the public interest. By permitting recovery of legitimate and prudent expenses, we are preserving the petition to deny process as a monitoring and regulatory tool. It is more likely that individuals or public interest groups will perform their function of informing us of licensee deficiencies if they can maintain hope of recovery of the expenses they incur. To preserve the private attorney general function of petitions to deny, we believe we should provide for the possibility that a petitioner can be made economically whole (fns. omitted).

Reimbursement of these expenses comports both with the FCC's policies on petitions to deny<sup>2/</sup> and with federal policy regarding reimbursement of fees of litigants serving as private attorneys-general.<sup>3/</sup>

WHEREFORE, the relief sought in this Joint Request should be granted in its entirety.

Respectfully submitted,

*Everald Thompson / dh*

Dennis Courtland Hayes  
General Counsel  
Everald Thompson  
Assistant General Counsel  
NAACP  
4805 Mt. Hope Drive  
Baltimore, Maryland 21215  
(301) 486-9193

*David Honig*

David Honig  
1800 N.W. 187th Street  
Miami, Florida 33056  
(305) 628-3600

General for NAACP

**EXHIBIT 1**

August 12, 1992

Arthur H. Harding, Esq.  
Fleischman and Walsh  
1400 16th Street, N.W.  
Washington, D.C. 20036

Dear Mr. Harding:

RE: WNCN-FM, New York, N.Y.

This letter sets out the Agreement between GAF Broadcasting Company, Inc. ("GAF"), the licensee of station WNCN-FM, New York, New York (the "Station") and the New York State Conference of Branches of the NAACP ("NAACP").

The NAACP enters into this Agreement as a representative of the radio listening public in the service area of the Station.

It is understood by both parties to this Agreement that GAF's substantive commitments in Section I herein relate to GAF's operation of the Station until the earlier of (1) the date GAF ceases to be the licensee of the Station or (2) June 1, 1998.

#### I. OPERATING PROVISIONS

1.1 Whenever job vacancies occur at the Station, and such vacancies are not to be filled through promotion from within, the Station will notify the NAACP and its Harlem Branch (the "Branch") and at least three other organizations, the identity of which will be determined periodically by the Station in consultation with the Branch.

1.2 Beginning in the nearest September, April or June following the Effective Date of this Agreement, the Station will modify its minority student internship program as set forth below. Such a program would be designed to permit at least two minority college or conservatory students to intern for reasonable compensation (at least the minimum wage) at the Station on a part-time basis during the fall and spring semesters, and to permit at least two minority college or conservatory students to intern for reasonable compensation (at least the minimum wage) on a fulltime basis during the summer. To the extent possible, the interns will be exposed to several job functions, such as sales, production, and promotion. The program will be organized in consultation with the Branch, which will recommend candidates. The Station will exercise ultimate

discretion for selecting the interns and establishing and administering their employment and compensation. The NAACP recognizes that this modified intern program furthers the goals of the FCC's EEO Rules.

1.3 The General Manager of the Station will endeavor to meet at least twice annually with the President of the Branch or her designee(s). Among the items on the agendas of these meetings will be the following matters:

- a. Recruitment sources to be used whenever job openings occur at the Station; and
- b. Training and internship opportunities for African Americans and other minorities for positions in broadcasting at the Station; and
- c. Progress toward the Station's goals for the employment of minorities in the Station's top four job categories; and
- d. Opportunities for African American and other minority suppliers to continue to provide services and consumable goods to the Station.

## II. IMPLEMENTING PROVISIONS

2.1 If, during the term of this Agreement, GAF files with the FCC a Form 314 or Form 315 application for consent to assign or transfer control of the license of the Station, GAF will attempt in good faith to persuade such assignee or transferee to manifest her intention to be bound by the terms of this Agreement and to assume any then-uneffectuated responsibilities of GAF under this Agreement. In the event that any such assignee or transferee manifests its intention to be bound by the terms of this Agreement and to assume any then-uneffectuated responsibilities of GAF under this Agreement, NAACP will not oppose any such application for consent to assign or transfer control of the license of the Station, nor will NAACP provide assistance or support to any other organization (established or ad hoc) seeking to interpose any such opposition.

2.2 GAF shall reimburse, or cause to be reimbursed, the legitimate and prudent legal expenses of NAACP in connection with its May 2, 1991 Petition to Deny the application for renewal of the Station's license ("Petition to Deny") and in connection with the negotiations resulting in this Agreement.

Arthur H. Harding, Esq.  
August 12, 1992  
Page 3

2.3 Unless otherwise provided, the following terms shall govern in the event of any default of the terms of this Agreement.

- a. In the event that either party breaches this Agreement, the breaching party shall have ten

Arthur H. Harding, Esq.  
August 12, 1992  
Page 4

2.6 GAF's obligations and undertakings as set forth  
herein shall not be diminished by virtue of any action by the



Arthur H. Harding, Esq.  
August 12, 1992  
Page 5



David Honig  
1800 N.W. 187th Street  
Miami, Florida 33056  
(305) 628-3600

Counsel for the New York State  
Conference of Branches  
of the NAACP

AGREED:

GAF Broadcasting Company, Inc.

By: \_\_\_\_\_

  
Arthur H. Harding  
its Attorney

3796H

**EXHIBIT 2**

### DECLARATION OF DAVID HONIG

David Honig states as follows:

1. I am the communications counsel for the national NAACP and its branches, state conferences of branches and regional offices. In that capacities I performed legal services on behalf of the New York State Conference of Branches of the NAACP in the above captioned matter.

2. The following attorneys also performed legal services on behalf of the NAACP in this matter: Dennis Courtland Hayes, General Counsel of the NAACP, and Everald Thompson, Assistant General Counsel of the NAACP. I have personal knowledge of their time and charges on this matter.

3. The following chart summarizes the hours spent by each attorney on these matters. Hours have been rounded downward to the nearest half hour. Where tasks were performed simultaneously in connection with this and other cases (eg. preparation of the legal arguments in the petition to deny) time for such tasks has been pro-rated. Tasks requiring less than 1/2 hour of time and time spent preparing this fee statement is not reflected below.

4. Tasks reflecting work performed before the filing of the Petition to Deny took place between March 3, 1991 and May 1, 1991. The settlement negotiations began on July 21, 1992 and concluded on August 12, 1992.

<u>Attorney</u>	<u>Work Performed</u>	<u>Hours</u>
E. Thompson	Counselled and prepared state and local NAACP principals for litigation	5.5
	Reviewed, approved Petition to Deny	1.0
	Provided counsel in connection with negotiations leading to Agreement	1.0
	Reviewed, approved Agreement	0.5
	<u>TOTAL HOURS, E. THOMPSON</u>	<u>8.0</u>
D. Hayes	Reviewed, approved Petition to Deny	1.0
	Reviewed, approved Agreement	0.5
	<u>TOTAL HOURS, D. HAYES</u>	<u>1.5</u>
D. Honig	Pre-litigation research	6.5
	Counselled NAACP principals concerning Petition to Deny	3.0
	Preparation of Petition to Deny	7.5
	Post-litigation research relating to potential hearing and intervention rights	2.0
	Negotiation of Agreement and Preparation of Settlement Petition	12.5
	<u>TOTAL HOURS, D. HONIG</u>	<u>31.5</u>

5. The hourly rates for each attorney are those rates ordinarily compensable to each of them in connection with civil rights litigation in the federal courts. Those rates are as follows: E. Thompson: \$200.00; D. Hayes: \$250.00; D. Honig: \$200.00.

6. Thus, the total amount of reimbursable fees is:

<u>Attorney</u>	<u>Hours</u>	<u>Attributable Fees</u>
E. Thompson	8.0	1,600.00
D. Hayes	1.5	375.00
D. Honig	31.5	6,300.00
<b><u>TOTAL</u></b>	<b><u>41.0</u></b>	<b><u>\$8,275.00</u></b>

7. Out of pocket expenses incurred on this matter and not otherwise reimbursed included the following (itemized to nearest dollar and aggregated among all counsel):

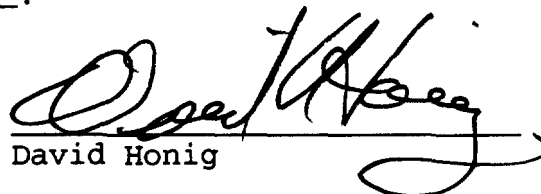
Federal Express (7 packages)	\$133
Paralegal's Time (\$50/hour)	100
Clerk's Time (\$25/hour)	25
Duplication (\$0.10/copy)	23
Telephone (14 calls)	66
Postage	6
Faxes (11)	30

**TOTAL OUT OF POCKET EXPENSES** **\$383**

8. Thus, the total time and charges attributable to this matter is \$8,658.00.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Executed 8/12/92.

  
David Honig

**EXHIBIT 3**

Declaration of No Consideration

I, Matthew Field, General Manager of WNCN(FM), New York, New York ("the Station"), licensed to GAF Broadcasting Company, Inc. ("GAF"), hereby certify that neither I nor anyone else representing GAF has paid or promised to pay money or other thing of value in connection with the proposed dismissal of the NAACP Petition to Deny the license renewal application of the Station with the exception of the proposed reimbursement of a portion of the NAACP's legitimate and prudent legal fees and expenses as set out in the foregoing Agreement.

There are no oral agreements between GAF and the NAACP.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Executed

September 14, 1992

  
Matthew Field \*

\*Executed copy to be submitted upon receipt

**EXHIBIT 4**



Declaration of No Consideration

I, Everald Thompson, Assistant General Counsel of the NAACP, on behalf of the NAACP's New York State Conference of Branches, hereby certify that neither I nor anyone else representing the NAACP has received or been promised any money or other thing of value in connection with the proposed dismissal of the NAACP Petition to Deny the license renewal application of station WNCN(FM), New York, New York ("the Station") with the exception of the proposed reimbursement of a portion of the NAACP's legitimate and prudent legal fees and expenses as set out in the foregoing Agreement.

There are no oral agreements between the NAACP and GAF Broadcasting Company, Inc. ("GAF"), the licensee of the Station.

I further certify that the NAACP did not file the petition to deny for the purpose of reaching the said Agreement, or for the purpose of reaching any other settlement, or for purposes of delay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Executed

9-14-92

Everald Thompson  
Everald Thompson \*

\*Executed copy to be submitted upon receipt

**CERTIFICATE OF SERVICE**

I, Arthur H. Harding, hereby certify that I have this 14th day of September, 1992 placed a copy of the foregoing "Joint Petition for Approval of Settlement Agreement" in U.S. First Class Mail, addressed to the following:

Roy Stewart, Esq.  
Chief  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Glen Wolfe  
Chief  
EEO Branch  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Washington, D.C. 20554

David M. Rice, Esq.  
Attorney at Law  
One Old Country Road  
Carle Place, NY 11514

Harry F. Cole, Esq.  
Bechtel & Cole  
1901 L Street, N.W.  
Washington, D.C. 20036

Morton Berfield, Esq.  
Cohen & Berfield  
1129 20th Street, N.W.  
Washington, D.C. 20036

  
\_\_\_\_\_  
Arthur H. Harding